

# fact sheet

## employment standards act

### RETAIL WORKERS

#### What is the purpose of the *Employment Standards Act, 2000 (ESA)*?

The *ESA* sets out rights of employees and requirements that apply to employers in most Ontario workplaces.

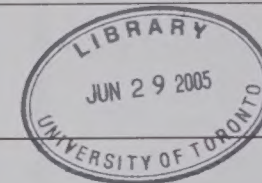
#### What work is not covered by the *ESA*?

Most employees and employers in Ontario are covered by the *ESA*. However, the *ESA* does **not** apply to certain individuals and persons or organizations for whom they perform work, including:

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work in program approved by a college of applied arts and technology or university
- A secondary school student who performs work in a work experience program authorized by the school board that operates the school in which the student is enrolled
- People who do community participation under the *Ontario Works Act, 1997*
- Police officers (except for the Lie Detectors part of the *ESA*, which does apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

Employees of the Crown are excluded from some (but not all) provisions of the *ESA*.

For a complete listing of other job categories not governed by the *ESA*, please check the *ESA* and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the *ESA*.



### NOTES

#### Need More Information?

If you have questions about the *Employment Standards Act*, call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160 or 1-800-531-5551, or visit a Ministry of Labour office or Government Information Centre in person.

Here's how you can get written publications about the *Employment Standards Act*:

- Ministry of Labour website: [www.gov.on.ca/lab](http://www.gov.on.ca/lab)
- Ministry of Labour Publications Sales unit: 1-800-809-4731

#### ESA Fact Sheets are available on the following subjects:

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| <input type="checkbox"/> Agricultural Workers                    | <input type="checkbox"/> Minimum Wage                              |
| <input type="checkbox"/> Domestic Workers                        | <input type="checkbox"/> Pregnancy Leave & Parental Leave          |
| <input type="checkbox"/> Emergency Leave                         | <input type="checkbox"/> Public Holidays                           |
| <input type="checkbox"/> Family Medical Leave                    | <input type="checkbox"/> Retail Workers                            |
| <input type="checkbox"/> Frequently Asked Questions              | <input type="checkbox"/> Role of the Ministry of Labour            |
| <input type="checkbox"/> Homeworkers                             | <input type="checkbox"/> Termination of Employment & Severance Pay |
| <input type="checkbox"/> Hours of Work & Overtime                | <input type="checkbox"/> Vacation                                  |
| <input type="checkbox"/> How Are You Covered by the <i>ESA</i> ? | <input type="checkbox"/> What Young Workers Should Know            |
| <input type="checkbox"/> How to File a Claim                     |  |

*This Fact Sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the *ESA*, please refer to the *Employment Standards Act, 2000 (ESA)* and regulations.*

Please call the Employment Standards Information Centre in the greater Toronto area at 416-326-7160, or toll-free outside Toronto at 1-800-531-5551.

Information on the *ESA* can also be found at the *Employment Standards Act* section of the Ministry of Labour's website: [www.gov.on.ca/lab](http://www.gov.on.ca/lab). You can order copies of the *ESA* and related information materials from:

- the Ministry of Labour's Publication Sales Unit at 1-800-809-4731;
- the Ontario government E-Laws website at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca) or,
- Publications Ontario, 1-800-668-9938; hearing impaired TTY 1-800-268-7095.

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Do retail workers have specific rights under the ESA?

The *ESA* contains rights that apply specifically to employees who work in most retail businesses. (A retail business is one that sells goods or services to the public.) These rights apply to both sales employees and non-sales employees, such as managers. These rights also apply to employees who work in a retail business even if their employer is not a retail business. For example, these rights apply to cleaners and security guards who are employed by a cleaning or security company but who are assigned to work in a shopping mall.

Retail workers have the right under the *ESA* to refuse to work on public holidays. They also have the right to refuse work on Sundays, unless they agreed otherwise, in writing, at the time of being hired and their hiring took place on or after September 4, 2001. (This "time of hire" exception does not apply where the reason for refusing to work is because of religious belief or observance.)

If an employee of a retail business agreed to work on a public holiday, the employee can later decline to work by giving the employer at least 48 hours' notice before the employee's work is to begin.

For the most part, retail workers are governed by the same rules as other employees under the *ESA*. For questions related to hours of work, minimum wage (including information on commission pay, and wages and deductions), overtime, vacation time and pay and other aspects of employment, consult the Fact Sheets.

Can employees refuse to work on a public holiday?

Employees of most retail businesses generally have the right to refuse to work on a public holiday.

Where the public holiday falls on a day that would ordinarily be a working day, most retail employees qualify for the public holiday off work and for public holiday pay.

Where the public holiday falls on a day that would ordinarily not be a working day, or the employee is on vacation, most retail employees qualify for a substitute day off and public holiday pay.

For information on industries and jobs that do not qualify for paid public holidays, or to which special rules apply, see the "How Are You Covered by the *ESA*?" Fact Sheet.

Does an employee have to give a reason for declining to work on a public holiday?

An employee of a retail business who has the right to refuse to work on a public holiday generally does not have to explain why he or she chooses not to work on a public holiday.

Can an employer punish an employee for not working on a public holiday?

No. An employee **who has a right of refusal** can't be dismissed, intimidated or penalized in any way for exercising his or her rights under the *ESA*.

Can employees refuse to work on a Sunday?

Sunday rules for employees hired before September 4, 2001

Employees of most retail businesses hired before September 4, 2001 have the right to refuse to work on Sundays.

If an employee agreed to work on Sundays, whether or not the agreement was made when he or she was hired, the employee can later decline to work by giving the employer at least 48 hours' notice before the employee's work is to begin.

Sunday rules for employees hired on or after September 4, 2001

Employees of most retail businesses hired on or after September 4, 2001 have the right to refuse to work on Sundays. However, if they agreed in writing at the time of being hired on or after September 4, 2001, that they would work on Sundays, they cannot then refuse to work on Sundays except for reasons of religious belief or observance.

An employer can't make an agreement to work on Sundays a condition of hiring an employee if this violates the *Human Rights Code*. (Contact the Ontario Human Rights Commission for further information. The number is listed in the blue pages of your telephone book, under "Human Rights".)

Employees who did not agree in writing at the time of being hired to work on Sundays can agree to work on a Sunday. They can later change their minds and decide not to work, but must give the employer notice at least 48 hours before they are scheduled to work.

Does an employee have to give a reason for declining to work a Sunday?

An employee of a retail business who has the right to refuse to work on a Sunday does not have to explain why he or she chooses not to work on a Sunday. However, where an employee has agreed in writing at the time of hire (on or after September 4, 2001) to work on a Sunday, they can later decline to do so by advising the employer their refusal is due to reasons of religious belief or observance.

Can an employer punish an employee for not working on a Sunday?

No. An employee **who has a right of refusal** can't be dismissed, intimidated or penalized in any way for exercising his or her rights under the *ESA*.

Are there times when retail employees cannot refuse to work on public holidays or Sundays?

The special rules regarding public holidays and Sunday work in the Act that allow certain retail employees to refuse to work public holidays and Sundays do not apply if the main business is to:

- sell prepared meals (i.e., restaurants, cafeterias, cafés)
- rent living accommodations (i.e., hotels, tourist resorts, camps, inns)

- provide educational, recreational or amusement services to the public (i.e., museums, art galleries, sports stadiums)
- sell goods and services that are secondary to the businesses described above and are located on the same premises (i.e., museum gift shops, souvenir shops in sports stadiums).

This means that retail employees working in these kinds of businesses have no right under the Act to refuse Sunday work. This also means that the regular rules about public holidays will apply to retail employees working in these kinds of businesses. Under these regular rules, some of these employees will still have the right to refuse to work public holidays. Please refer to the "Public Holidays" Fact Sheet for more information.

What if the employer does not follow the *ESA*?

If an employee thinks the employer is not complying with the *ESA*, he or she can call or visit the nearest Ministry of Labour office to discuss a particular situation or to file a complaint. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer—including an order to comply with the *ESA*.

This Fact Sheet provides general information about retail workers as set out in the *Employment Standards Act, 2000 (ESA)* and its regulations. For complete information please refer to the *ESA* and the regulations.